

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**UNIVERSAL ENTERTAINMENT
CORPORATION,**

Plaintiff,

V.

ARUZE GAMING AMERICA, INC., et al.,

Defendants.

Case No. 2:18-cv-00585-RFB-NJK

Order

[Docket Nos. 551, 552]

Pending before the Court is Defendants' motion for leave to extend duration of depositions. Docket No. 552. Plaintiff filed a response, Docket No. 586, and Defendants filed a reply, Docket No. 596. Also pending before the Court is Defendants' motion to seal the motion for leave to file a brief, Docket No. 551. Pursuant to the requirements of this case's protective order, Docket No. 522, Plaintiff filed a notice regarding the designated documents to be sealed, Docket No. 585. The parties' motions are properly resolved without a hearing. *See* Local Rule 78-1.

I. BACKGROUND

Defendants seek leave to extend the duration of three depositions. The parties and the Court are familiar with the background of this case. Accordingly, the Court will summarize only the factual and procedural information relevant to the instant motion.

An initial scheduling order was entered in this case on July 16, 2018. Docket No. 26. To facilitate discovery, the parties proposed, and the Court granted several stipulations governing the discovery process. *See* Docket Nos. 38 (confidentiality and protective order), 39 (ESI order), 48 (translation and interpretation protocol order), 88 (deposition protocol order), 202 (amended protective and confidentiality order). The Deposition Protocol was entered on May 28, 2019. Docket No. 88. Before the Deposition Protocol was entered, Defendants alone had issued 163 requests for production and Plaintiff had produced 25,000 documents. Docket No. 586 at 4. Substantially modifying the default rules for depositions, the Protocol allows for each side to take

1 up to twenty-five depositions. *Id.* at 2. Depositions of non-English speakers were expanded to
 2 last two eight-hour days. *Id.* Rule 30(b)(6) depositions were also expanded to a two-day duration.
 3 *Id.* Most relevant to the instant motion, the Protocol allowed for each party to take five depositions
 4 of non-English speakers lasting four days of eight hours per day. *Id.* at 2-3. Defendants now seek
 5 to extend the duration of three of the four-day depositions to eight days. Docket No. 552 at 3.

6 **II. STANDARDS**

7 “Discovery is supposed to proceed with minimal involvement of the Court.” *Cardoza v.*
 8 *Bloomin’ Brands, Inc.*, 141 F. Supp. 3d 1137, 1145 (D. Nev. 2015). To encourage a cooperative
 9 discovery process, this Court’s Local Rules require parties to meet and confer before filing a
 10 discovery motion with the Court. Local Rule 26-6(c). Parties must “treat the informal negotiation
 11 process as a substitute for, and not simply a formalistic prerequisite to, judicial resolution of
 12 discovery disputes.” *Nevada Power v. Monsanto*, 151 F.R.D. 118, 120 (D.Nev.1993).¹

13 “Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of
 14 7 hours.” Fed. R. Civ. P. 30(d)(1). Courts must allow for additional time if it is necessary to fairly
 15 examine the deponent, subject to the limitations of Federal Rules of Civil Procedure 26(b)(1) and
 16 (2).² ³ *Id.* “[A] showing of good cause is necessary to justify a court order seeking to extend a
 17 deposition.” *Mielke v. Standard Metals Processing, Inc.*, 2015 WL 2152664, *4 (D. Nev. 2015).
 18 When considering whether good cause exists to extend a deposition, a court may consider: (1)
 19 whether the witness needs an interpreter, (2) whether the deposition will cover events spanning a

20 ¹ The last meet and confer regarding extending depositions occurred on June 3, 2022;
 21 however, the instant motion was not filed until August 19, 2022. Docket No. 552 at 4. Such a
 22 delay between meeting and conferring and the filing of the instant motion raises concerns that the
 23 parties did not truly “present to each other the merits of their respective positions with the same
 24 candor, specificity, and support during the informal negotiations as during the briefing of discovery
 motions.” *Cardoza*, 141 F. Supp. 3d at 1145. Further, the Court has reviewed several of the
 pending discovery motions in this case and has serious concerns that the parties are not taking
 seriously their obligation “to be cooperative, practical and sensible” in conducting discovery. *Id.*

25 ² Subsequent references to “Rule” are references to the Federal Rules of Civil Procedure.

26 ³ Rule 26(b)(1) allows parties to “obtain discovery regarding any nonprivileged matter that
 27 is relevant to any party’s claim or defense and proportional to the needs of the case.” Rule 26(b)(2)
 requires a court to limit discovery that is unreasonably cumulative or duplicative, can be obtained
 28 from a less burdensome source, is outside the scope of Rule 26(b)(1), or that the requesting party
 has already had an ample opportunity to obtain in the action. Fed. R. Civ. P. 26(b)(2)(C).

1 long period of time, (3) whether the witness will be questioned about numerous or lengthy
 2 documents, and (4) whether the witness will be examined by multiple parties. Fed. R. Civ. P. 30
 3 (Advisory Committee Notes to the 2000 Amendment).

4 **III. DISCUSSION**

5 Defendants submit that good cause exists to extend the depositions of (1) Mr. Jun Fujimoto,
 6 (2) Mr. Toji Takeuchi, and (3) Universal Entertainment Corporation’s (“UEC”) Rule 30(b)(6)
 7 deponent. Docket No. 552 at 3. Defendants submit that four main arguments demonstrate good
 8 cause to extend these depositions. First, Defendants submit that the need for translation means
 9 that the substantive time of each deposition will be less than it would be for a non-translated
 10 deposition. *Id.* at 5-6, 9, 11. Second, Defendants submit that the depositions will cover a variety
 11 of events occurring over a long period of time. *Id.* at 6-7, 9-11. Third, Defendants submit that the
 12 depositions will involve numerous lengthy documents. *Id.* at 7-10, 12-14. Finally, Defendants
 13 submit that the depositions will involve questioning by multiple parties. *Id.* at 9, 11.

14 Plaintiff submits that good cause does not exist to extend the depositions. Plaintiff submits
 15 that the requested extensions run contrary to the requirements of Rule 30. Docket No. 586 at 7-8.
 16 Plaintiff further submits that Defendants’ concerns are properly accounted for in the Deposition
 17 Protocol, and that nothing has changed in the case warranting deviation from the agreed-upon
 18 procedures. *Id.* at 8-12. Plaintiff additionally submits that good cause does not exist for any of
 19 Defendants’ particular requests for leave to extend the duration of depositions. *Id.* at 12-17.
 20 Defendants have the better argument.⁴

21 A. General Factors

22 The Court will address the parties’ general submissions before addressing the submissions
 23 specific to each deponent. Plaintiff is correct that the need for translation was accounted for in the
 24 Deposition Protocol. *Id.* at 9. However, as Defendants observe, translated depositions tend to
 25 proceed at a slower pace and produce less substantive information in the same amount of time than

26
 27 ⁴ The parties each submit that concerns about judicial economy support their respective
 28 positions. Docket Nos. 552 at 14, 586 at 17-19. The extensive and ongoing discovery motion
 practice in this case suggests to the Court that, regardless of how it rules on Defendants’ motion,
 judicial economy will suffer.

1 non-translated depositions. Docket No. 552 at 6. Plaintiffs are also correct that Defendants knew
2 at the time the Deposition Protocol was entered that multiple parties would need to question
3 deposition witnesses. Docket No. 586 at 10. However, the Deposition Protocol made clear that
4 the parties reserved the right to otherwise move for extensions of depositions. Docket No. 88 at
5 3. Accordingly, the fact that the Deposition Protocol accounted for these factors does not preclude
6 the relief Defendants seek.

7 The second factor, whether the depositions will cover events spanning a long period of
8 time, supports granting leave to extend the depositions. Defendants indicate that Mr. Fujimoto's
9 deposition will cover events spanning over a decade, Docket No. 552 at 6-7; Mr. Takeuchi's
10 deposition will cover events occurring over an eight-year period, *id.* at 11; and UEC's Rule
11 30(b)(6) deponent will testify about events occurring over a fifteen-year timespan, *id.* at 9-10.
12 Moreover, the events the deponents may be questioned about are complicated and varying.
13 Deposition subjects could relate to the patent allegations, *see id.* at 6; Docket No. 553-2 at 25; the
14 alleged corporate malfeasance and the related Special Investigation Committee ("SIC"); *see*
15 Docket No. 552 at 6, 9, 11; and the interpretation and applicability of corporate policies, *see id.* at
16 9, 13. Considering the limitations posed by translated depositions discussed above, the Court finds
17 that the number of events occurring over such long periods of time constitutes good cause to extend
18 the depositions.

19 The third factor, whether the witnesses will be questioned about numerous or lengthy
20 documents, also supports granting leave to extend the depositions. Defendants list numerous
21 documents they will present at Mr. Fujimoto's deposition. *Id.* at 7-8. They further state that, of
22 the 163 topics for UEC's Rule 30(b)(6) deposition, 72 will involve references to documents
23 produced in discovery. *Id.* at 10. Finally, Defendants indicate that Mr. Takeuchi's deposition will
24 involve substantial questioning about documents pertaining to a disputed loan transaction and
25 corporate policies. *Id.* at 12-13. These representations were made before discovery closed, and
26 the remaining discovery to be completed could result in *hundreds of thousands* of additional
27 documents that are potentially relevant to the depositions being disclosed.

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1 Plaintiff submits that Defendants misrepresent the third factor. Docket No. 586 at 11.
2 Plaintiff asserts that the number of documents to be used is only relevant in the good cause analysis
3 if the documents to be used in the deposition are disclosed prior to the deposition, but the deponent
4 does not review the documents. *Id.* However, Courts have focused on the number of documents
5 to be used in the deposition, and not the documents' pre-deposition disclosure status, as the
6 relevant consideration. *See Tankersley v. MGM Resorts Int'l*, 2022 WL 1395457, *3 (D. Nev.
7 2022); *Lassiter v. Hidalgo Med. Services*, 2018 WL 3377707, *2 (D.N.M. 2018) ("[C]ourts may
8 consider a number of factors, including ... (2) whether the witness will be questioned about
9 numerous or lengthy documents); *Brooks v. Motsenbocker Advanced Devs., Inc.*, 2008 WL
10 2033712, *3 (S.D. Cal. 2008). Moreover, the Advisory Committee notes mention numerous
11 documents as a relevant factor insofar as the number of documents risks "prolonging the
12 deposition." Fed. R. Civ. P. 30 (Advisory Committee Notes to the 2000 Amendment). Here, the
13 number of documents to be used will almost certainly prolong the depositions. Plaintiff's
14 submission that Defendants misrepresent this factor is, therefore, unpersuasive. The Court,
15 therefore, finds that the large number of documents to be used in the depositions, which could
16 grow larger, constitutes good cause to extend the depositions.

17 **B. Deposition Specific Submissions**

18 Plaintiff raises certain additional arguments against extending Mr. Fujimoto's deposition.
19 Plaintiff first submits that Defendants always planned to exhaust Mr. Fujimoto's knowledge about
20 the Special Investigation Committee, regardless of whether certain documents are disclosed or not.
21 Docket No. 586 at 14. Accordingly, Plaintiff submits that the need to depose Mr. Fujimoto on the
22 SIC documents does not constitute good cause to extend his deposition. *Id.* The Special
23 Investigation Committee, however, will constitute only one topic of Mr. Fujimoto's deposition.
24 *See* Docket No. 552 at 6. Moreover, the disclosure status of the documents does not impact the
25 analysis. If the documents remain undisclosed, Defendants may need Mr. Fujimoto to provide
26 information regarding what is contained within them. If the documents are disclosed, Defendants
27 may need to question Mr. Fujimoto regarding their specific contents and implications. Mr.
28 Fujimoto may have substantial information regarding every facet of this case and the related

1 documents that warrants granting leave to extend his deposition. Plaintiff's reference to the policy
 2 of limiting "apex depositions" fails for similar reasons. Docket No. 586 at 13 n. 8. Mr. Fujimoto
 3 has extensive and "unique, personal knowledge" of the complicated events underlying this case
 4 such that the "tremendous potential for abuse and harassment" that justifies limiting apex
 5 depositions is not present here. *Int' Game Tech v. Ill. Nat'l Ins. Co.*, 2018 WL 7499823, *2 (D.
 6 Nev. 2018).

7 Plaintiff's submissions as to why leave to extend Mr. Takeuchi's deposition should be
 8 denied also fail. As discussed above, the scope of information to be covered at Mr. Takeuchi's
 9 deposition is extensive, such that references to Defendants' inefficiency are insufficient to
 10 undermine a good cause finding. *See id.* at 14. Moreover, Plaintiff's claim that Defendants
 11 misunderstand certain UEC Subsidiary Company Management Rules ("SCMR") supports granting
 12 leave to extend the depositions. *See id.* at n. 9. Since the SCMR's scope is relevant to multiple
 13 allegations in this suit, making sure neither party "fundamentally misunderstands the SCMR" is
 14 relevant and proportional to the needs of this case.

15 Plaintiff's submissions as to why the Court should not grant leave to extend the deposition
 16 of UEC's Rule 30(b)(6) deponent also fail. Plaintiff submits that the 163 noticed topics for the
 17 deposition are "expansive and unreasonable." Docket No. 586 at 16. Objections to noticed
 18 deposition topics are more properly raised in the meet and confer required by Rule 30(b)(6), and,
 19 if that meet and confer fails, in a motion for a protective order. In the context of a motion for leave
 20 to extend depositions, however, a large number of topics to be examined at the deposition supports
 21 granting leave to extend. Plaintiff's submission regarding the lack of third-party information is
 22 also unconvincing. Plaintiff is correct that third party testimony could not bind UEC whereas
 23 UEC's Rule 30(b)(6) deponent can. However, to the extent Defendants seek to obtain information
 24 regarding actions the third parties took as a function of their employment by UEC, this would be
 25 information "known or reasonably available" to UEC. Fed. R. Civ. P. 30(b)(6).

26 **IV. MOTION TO SEAL**

27 Defendants filed a motion to seal their motion to extend depositions and attached exhibits.
 28 Docket No. 551. Defendants seek to seal exhibits E, G, H, J, M, N, and O because those exhibits

1 have been designated Confidential or Highly Confidential by Plaintiff. *Id.* at 2. Pursuant to the
 2 protective order, *see* Docket No. 203 at 2, Plaintiff filed a notice regarding Defendants' motion to
 3 seal, Docket No. 585. Plaintiff's notice removes the Confidential designation from the documents
 4 constituting Exhibits J, N, and O. *Id.* at 2. Plaintiff also does not object to the unsealing of Exhibit
 5 H. *Id.* Accordingly, those documents will be unsealed. Plaintiff submits that good cause exists
 6 to seal Exhibits E, G, and M.

7 The general presumption is that the public has the right to access judicial filings. *See, e.g.,*
 8 *Nixon v. Warner Commc'n Inc.*, 435 U.S. 589, 597 (1978). Certain types of documents are
 9 exempt from this presumption and have traditionally been kept secret. *Kamakana v. City & Cnty.*
 10 *of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Ninth Circuit "case law has identified two
 11 categories of documents that fall in this category: grand jury transcripts and warrant materials in
 12 the midst of a pre-indictment investigation." *Id.* The presumption of public access can, however,
 13 be overcome for documents not traditionally kept secret. *San Jose Mercury News, Inc. v. U.S.*
 14 *Dist. Ct.*, 187 F.3d 1096, 1102 (9th Cir. 1999). The sealing of nondispositive motions and related
 15 documents are evaluated under a "good cause" standard. *Kamakana*, 447 F.3d at 1179-80.

16 Plaintiff submits that good cause exists to seal Exhibit E because the Exhibit contains
 17 information concerning the operations, internal governance, and deliberations of UEC board
 18 members. Docket No. 585 at 2. Plaintiff further submits that deference to investigations by the
 19 Nevada Gaming Control Board and other regulatory and law enforcement authorities, and the risk
 20 of damaging UEC's relationships with these entities, constitute good cause to seal Exhibit E. *Id.*
 21 at 3. The Court finds that good cause exists to seal Exhibit E.

22 Plaintiff submits that good cause exists to seal Exhibit G because release of the documents
 23 would damage UEC's relationships with the Tokyo Stock Exchange and the exchange's self-
 24 regulatory authority, the Japan Exchange Regulation. Docket No. 585 at 3. Plaintiff further
 25 submits that publication of Exhibit G would interfere with an ongoing investigation by the Tokyo
 26 Stock Exchange and Japan Exchange Regulation. *Id.* The Court has previously ordered similar
 27 documents sealed in this case and is persuaded for the same reasons that good cause exists to seal
 28 Exhibit G. *See* Docket Nos. 403 at 3-4, 415 at 3; *see also* Docket No. 274 at 2.

1 Plaintiff submits that good cause exists to seal Exhibit M because it contains detailed and
2 sensitive financial information regarding non-public components of UEC's businesses. *Id.* at 4.
3 As with Exhibit G, the Court has previously found good cause to seal similar information in this
4 case. *See* Docket Nos. 403 at 4, 415 at 2. Accordingly, the Court finds good cause exists to seal
5 Exhibit M.

6 **V. CONCLUSION**

7 For the reasons discussed more fully above, Defendants' motion for leave to extend
8 depositions is **GRANTED**. Docket No. 552. Defendants may depose Mr. Jun Fujimoto, Mr. Toji
9 Takeuchi, and UEC's Rule 30(b)(6) deponent for eight days of eight hours per day each, at a time
10 and place mutually agreeable to the parties.

11 Also for the reasons discussed more fully above, Defendants' motion to seal is **GRANTED**
12 in part and **DENIED** in part. Docket No. 551. The motion to seal is **GRANTED** as to Exhibit
13 E, Docket No 554-5, Exhibit G, Docket No. 554-7, and Exhibit M, Docket No. 554-13. The motion
14 to seal is **DENIED** as to Exhibit E, Docket No. 554-5, Exhibit H, Docket No. 554-8, Exhibit J,
15 Docket No. 554-10, Exhibit N, Docket No. 554-14, and Exhibit O, Docket No. 554-15. The
16 Clerk's Office is **INSTRUCTED** to keep all subject documents sealed. Defendants are
17 **ORDERED** to file a public copy of their motion to extend the duration of depositions on the
18 Docket, with any references, quotations, or discussion of Exhibits E, G, and M redacted by
19 December 5, 2022. Defendants are further **ORDERED** to file a public copy of Exhibits H, J, N,
20 and O by December 5, 2022.

21 IT IS SO ORDERED.

22 Dated: November 30, 2022

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Nancy J. Koppe
United States Magistrate Judge

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